IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JARVIOUS COTTON, et al. PLAINTIFFS

vs. Civil Action No. 4:92cv63-D-D

SHIRLEY TAYLOR, et al. DEFENDANTS

CONSOLIDATED WITH

KENNETH GARRISON, et al. PLAINTIFFS

vs. Civil Action No. 4:92cv109-D-O

SHIRLEY TAYLOR, et al. DEFENDANTS

MEMORANDUM OPINION

Upon consideration of the file and record in this a
the Magistrate Judge's Report and Recommendation s
Having conducted an independent, *de novo* review of the
applicable case law, the court is of the opinion that th
assess the facts in evidence when reaching his conclu

From sometime late in 1991 until May of 1992, the building known as Unit 29K at the Mississippi State Penitentiary in Parchman, Mississippi had a leaky roof. As a result, every time nature graced the area with rain during that winter and spring, the inmates housed in that unit were subjected to water - in their bunks, on the floor, and throughout the unit.

> The leaking was so severe that sleeping bunks, clothing and other personal possessions became saturated, electrical outlets sparked and water collected on the floor. At least one correctional officer testified that he wore a raincoat when working in Unit 29K during this period.

Report and Recommendation, p.1. The plaintiffs testified at trial that exposure to the water

inside Unit 29K, aside from generally discomforting conditions, destroyed personal property. Further, the evidence reflects that the wet conditions continuously beset the plaintiffs with minor ailments and cold-like symptoms. The defendants conceded at trial that they became aware of the water problem in Unit 29K sometime in December of 1991. The contractor who constructed the building attempted to fix the problem, to no avail. The ultimate conclusion of the builder was that a new roof was required for the building. This endeavor, with its $400,000.00 price tag, had to be submitted to the Bureau of Buildings for approval and contracting. In light of the operation of normal bureaucratic procedures, the replacement of the roof became final in May of 1992. Until its ultimate repair, inmate crews repeatedly and unsuccessfully attempted to repair the roof with tar. Throughout this entire period, however, the defendants continued to house the plaintiffs in Unit 29K.

The undersigned finds that the Magistrate Judge did accurately and correctly state the controlling law in the case at bar. As convicted inmates, the plaintiffs are protected by the Eighth Amendment to the United States Constitution from living conditions which are so intolerable as to constitute "cruel and unusual" punishment because they deprive the inmates of a single, identifiable human need. See, e.g., Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978); Grabowski v. Jackson Co. Public Defender, 47 F.3d 1386, 1395 (5th Cir. 1995). However, "[a] prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 1984, 128 L.Ed.2d 811 (1994).

In his Report and Recommendation, however, the Magistrate Judge concluded:

> While the roof problem was severe and deprived the plaintiffs of minimal[ly] safe housing, considering the constraints under which state institutions operate, the evidence confirms that the defendants did as much and moved as quickly as possible to remedy a terrible situation. Moreover, because of the limited space at the Mississippi State Penitentiary, defendants had no meaningful alternative but to continue housing prisoners at the unit. They were not deliberately indifferent to the hostile living conditions of plaintiffs.

Report and Recommendation, p. 3. The undersigned agrees with the Magistrate Judge that in light of the conditions of the Unit 29K building, the plaintiffs were deprived of the single, identifiable human need of minimally safe housing. As to the remaining aspects of the plaintiffs' claims, however, the undersigned in not in agreement with the Magistrate Judge. The court has carefully scrutinized the transcript of the trial of this matter before the Magistrate Judge, and finds insufficient evidence to support the remainder of the Magistrate Judge's conclusions which underpin his finding that the defendants were not deliberately indifferent in the case at bar.

The undersigned finds that based upon the evidence before the court, the plaintiffs were subjected to a deprivation of minimally safe housing. Further, in light of the defendants knowledge of the housing dilemma and of their inability to remedy the problem, the court finds that the plaintiffs have made a *prima facie* showing that the defendants' decision to continue housing the plaintiffs in Unit 29K was unreasonable, and evinced a deliberate indifference to a substantial risk of serious harm. The defendants have failed to rebut this *prima facie* case with any evidence that would support a finding of reasonableness. While there was sufficient evidence placed before the Magistrate Judge concerning efforts to repair the roof of Unit 29K, there is nothing before the court which indicates that the state penitentiary was so crowded during the time period in question that the defendants "had no meaningful alternative" but to

continue housing inmates in Unit 29K. No evidence, for example, was placed before the court regarding the availability or expense of temporary housing such as a "quick bed" facility, the renting or purchase of manufactured housing, or even tents. Likewise, there was no proof regarding the feasibility of converting the use of other buildings on the penitentiary, such as a gymnasium,ime as the roof of Unit 29K was repaired.

The defendants were presented an opportunity to present such evidence at the trial of this matter and rebut the plaintiffs' *prima facie* showing, but chose not to do so. This court may take judicial notice of generally overcrowded conditions at Parchman throughout the years, but judicial notice is an incomplete substitute for testimonial and documentary evidence and cannot be stretched to an extent to protect the defendants in this case. The undersigned cannot take judicial notice of the fact that the state penitentiary was so financially and logistically constrained during the time period at bar that no alternative space was reasonably available for the inmates of Unit 29K. In light of the admitted knowledge on the part of the defendants regarding the living conditions in Unit 29K, this court sees no alternative but to find that the defendants subjectively knew of a substantial risk of serious harm to the plaintiffs in this case and disregarded that risk by failing to take reasonable measures to abate it. As such, the court finds for the plaintiffs on their claims, and judgment shall be entered for the plaintiffs in this case against the defendants.

Upon review of the record as a whole, and after reflection of all relevant considerations, the court finds that a reasonable measure of damages for each plaintiff in this case is $2,000.00, for a total verdict against the defendants in this matter in the amount of $10,000.00. Such an amount reasonably compensates the plaintiffs in light of the nature of this case, reflects both the conditions to which the plaintiffs were subjected and the period of time to which they endured

these conditions, and property lost to water damage. As the proof before the court indicates that the leaking problem has been repaired and that there is no danger of a reoccurrence of the problem, the plaintiffs are not entitled to injunctive relief.

A separate order in accordance with this opini day of April 2001.

United States District Judge

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ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION
AND ENTRY OF JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

) the Report and Recommendation of the United States Magistrate Judge Jerry A. Davis dated May 30, 1997, shall not be approved and adopted as the opinion of the court; the plaintiffs' objections to that Report and Recommendation are hereby SUSTAINED;

) the court finds in favor of the plaintiffs on their Eighth Amendment claim regarding the conditions of their confinement. Therefore, judgment is hereby entered in this cause in favor of the plaintiffs -- Jarvious Cotton, Larry P. Jackson, Robert Brent Layne, Ronnie Smith, and Kenneth Garrison -- in the amount of $2,000.00 each, for a total verdict against the defendants in the amount of $10,000.00.

SO ORDERED, this the _____ day of April 2001.

_____
United States District Judge